

Agenda Item No:

Report To: Cabinet

Date of Meeting: 31 March 2022

Report Title: Adoption of Stodmarsh Operational Statement

Report Author: Simon Cole, Head of Planning and Development
Job Title:

Portfolio Holder: Cllr. Neil Bell

Portfolio Holder for: Portfolio Holder for Planning & Development



Summary:

Ashford Borough Council continues to respond to the various issues that have arisen from the need for new housing and other developments to achieve 'nutrient neutrality', due to the deterioration of Stodmarsh Lakes – a network of nationally and internationally protected lakes in the neighbouring Canterbury district. This follows Natural England Advice issued in July 2020.

In July 2021 Cabinet agreed to seek to create nutrient mitigation through the creation of new strategic wetlands within the borough. Doing so will enable new residential development to be granted planning permission and accord with the Habitats Regulations.

The Council continue to also pursue other strategic responses to deal with the wider Stodmarsh nutrient issue, including working with other LPAs to deliver a catchment wide strategy (work ongoing) and the lobbying of Government to assist with the delivery of nutrient mitigation, including through upgrades of Wastewater treatment works in the Stour catchment. The wetland part of the solution is seen as complementary to this wider response.

Accordingly, this report sets out the progress to date and seeks the Cabinet's agreement that an Operational Statement is adopted as a means of informing the development industry, stakeholders and the public of important principles relating to the progression of new wetlands in the Borough. The Statement has been prepared in partnership with the Environment Agency, Natural England and Kent County Council.

Key Decision: NO

Wards Affected (though not significantly): Wards (wholly or partially) located in the Stour Catchment: Aylesford & East Stour, Beaver, Bircholt, Bockhanger, Bybrook, Charing, Conningbrook & Little Burton Farm,

Downs North, Downs West, Furley, Goat Lees, Godinton, Highfield, Kennington, Kingsnorth Village & Bridgefield, Mersham, Sevington with Finberry, Norman, Park Farm North, Park Farm South, Repton, Roman, Saxon Shore, Singleton East, Singleton West, Stanhope, Upper Weald, Victoria, Washford, Weald Central, Weald North, Weald South, Willesborough, Wye with Hinxhill

Recommendations: The Cabinet is recommended to:-

- I. Note the progress on the project to date, and**
- II. Agree to adopt the appended Operational Statement as a document that informs the public and other stakeholders of material considerations likely to be reflected in the Council's decision-making on relevant planning applications, and to that end to be published on the Council's website, and**
- III. Authorise the Head of Planning & Development, in consultation with the Portfolio-Holder for Planning & Development, to make or agree to non-strategic changes or updates to the Operational Statement as may be required, in liaison with the other signing bodies.**

Policy Overview:

The Conservation of Habitats and Species Regulations 2017 (as amended) and recent case law have provided the legal framework for granting planning permissions for development that may have a significant impact on the internationally-protected habitats at Stodmarsh.

Legal advice sought by the Council has confirmed that this issue is a significant material consideration in determining planning applications.

Many housing applications in the Stour catchment have been unable to be determined. This 'hold' on granting permissions will continue until strategic wetlands are delivered which release nutrient mitigation for affected schemes.

The Local Plan 2030 does not contain a specific policy for nutrient neutrality, as Natural England did not raise this as an issue during the Local Plan preparation. However, Policy ENV1 is relevant to the wider issue of biodiversity and conserving the environment. This reinforces the importance of protecting the environment from the impacts of development.

Financial Implications:

There are no direct financial implications resulting from the specific recommendations in this report.

Legal Implications:

Decisions on planning applications in Ashford Borough,

*Text agreed by
Principal Solicitor –
Strategic
Development on 23
March 2022*

whether for development involving overnight accommodation or for wetlands, are taken by the Council's Planning Committee or Officers based on the development plan and other material considerations; wherever applicable, these considerations would include those referred to in the proposed Operational Statement. The Operational Statement does not form a statement of Council policy, but is a most useful means of publicising relevant material considerations to the public and the development industry. The Operational Statement will be kept under review as work continues on avoiding and mitigating potential impacts on Stodmarsh from certain types of development.

Equalities Impact Assessment:

See Attached.

Data Protection Impact Assessment:

None.

Risk Assessment (Risk Appetite Statement):

Not applicable.

Sustainability Implications:

Nature based solutions, such as the creation of strategic wetlands, will provide the opportunity to provide multi-functional benefits – which in turn could help contribute to wider 'greener' goals of the Council.

Working directly with Natural England and the Environment Agency will clearly ensure that these objectives are met in the most optimum way possible.

Other Material Implications:

The wider Stodmarsh 'issue' is a significant one for the Council and not something which the Council has faced before. Nor was it an issue raised by Natural England as part of the Council's Local Plan formulation, meaning no plan-led solution was or has yet been progressed.

As it stands, many planning permissions for new housing in large parts of the borough have been on hold for over a year – including several areas which are earmarked for significant new development up to 2030 in the Local Plan.

The significance has already been recognised in the form of appointing expert consultants to help provide a strategy that can work within the borough at the Council's expense.

Exempt from Publication:

NO

**Background
Papers:**

Stodmarsh Operational Statement [Appendix 1]

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Report Title: Adoption of Stodmarsh Operational Statement

Introduction and Background

1. In July 2020, Natural England issued Advice to the Local Planning Authorities located in the Stour catchment setting out the deteriorating water quality at the Stodmarsh Lakes. This Advice covered part of the Ashford borough as well as the districts of Canterbury, Dover, Folkestone & Hythe, and Maidstone.
2. In order for affected development proposals to progress through the planning system, they are required to demonstrate that they can deliver 'nutrient neutrality', often through delivering suitable mitigation, in a way which is consistent with the Advice.
3. The Council are committed to responding to the wider Stodmarsh nutrient issue in a strategic way. This approach is deemed necessary given the significant spatial area, the complexities of finding a solution, the number of different organisations involved, and the practical implications arising from the issuing of the Advice. Doing so provides the best mechanism for releasing the current 'hold' on housing growth within East Kent.
4. As part of this strategic approach, the East Kent authorities (including Ashford) have been working together on a strategic, catchment-wide response to ensure that all the relevant elements associated with dealing with the wider Stodmarsh nutrient issue are addressed. The Council welcomes this strategic response and continues to be an active partner in delivering a co-ordinated response.
5. It is important to note that each of the affected districts have different challenges regarding the nutrient neutrality issue, as a consequence of the different circumstances of the districts and their respective development pressures. However, all the East Kent Councils are united in the need to deliver a range of strategic solutions that, in combination, will deal with the wider Stodmarsh nutrient issue and allow otherwise sustainably planned housing growth to progress, whilst also adhering to their respective environmental obligations.
6. The emerging catchment-wide strategic response, which is being prepared with support from the Kent and Medway Economic Partnership (KMEP), has focused on 4 key areas:
 - Lobbying Government to provide assistance to deliver the actions set out below.
 - Drafting a methodology to utilise "nutrient credits" from future and planned improvements to the Wastewater Treatment Works,
 - Promoting the hierarchy of delivering mitigation on-site where possible, before relying on off-site mitigation solutions, and

- Exploring ways in which the water regulatory process might be amended as a means of fast-tracking a joined up response that could benefit the impact of development on Stodmarsh Lakes.
7. In Ashford, the Council, alongside having involvement in the other strategic approaches set out above, is also actively progressing a borough scale strategic solution in the form of new strategic wetlands. This part of the solution sits alongside, and is viewed as complementary to the work of the East Kent strategic response, to deliver a co-ordinated catchment wide solution.
 8. It should also be noted that Canterbury City Council are supportive of the stance being taken by Ashford Borough Council. They are also working on a district wide mitigation strategy, similar to Ashford's, to identify the issues and the potential land availability for new strategic wetlands. They support the principles in the Operational Statement and agree the need to resist 'standalone' or 'off-site' wetlands, at this time, as a means of ensuring a strategic wetland solution can be delivered.
 9. It is anticipated that both Ashford's and Canterbury's mitigation strategies will eventually form part of the catchment-wide response.
 10. The Council has also recently (March 2022) received an updated nutrient neutrality methodology from Natural England, as part of the national roll-out of the nutrient neutrality advice. This does not affect the desire to deliver a strategic wetland solution within the borough. The updated methodology and advice will be published on the Council's website shortly.

Progress so far

11. As of March 2022, work on the Council's response to the wider Stodmarsh nutrient issue includes:
 - Drafting an emerging Ashford Borough Mitigation Strategy that actively explores land based solutions within the borough for strategic wetlands in addition to development site solutions,
 - Seeking to acquire land for new strategic wetlands in the borough,
 - Involvement in a catchment-wide strategy, prepared by the affected East Kent Local Planning Authorities and the Kent and Medway Economic Partnership (KMEP),
 - Drafting and finalising an Operational Statement for the borough (see below),
 - Presentations and public updates given from the Council to the market so they are aware of the current situation and key next steps, and
 - Ongoing work with the Environment Agency, Natural England and the Council's appointed consultants about the various issues associated with delivering new wetlands in the borough.
12. Key future work areas include:
 - Planning applications for new strategic wetland or wetlands: Work to prepare and submit planning applications for the creation of the

strategic wetlands within the borough, once suitable land has been acquired for the purposes of creating strategic wetlands.

- Work to include the preparation and submission of relevant information to also support applications for the relevant environmental permits associated with the creation of strategic wetlands.
- The production of a Supplementary Planning Document (SPD) (title to be determined): The primary purpose of the SPD will set out how any future nutrient credit based system will work and how the Council will seek to apportion credits, if needed, in parallel with wetland delivery. This SPD will be prepared through the process set out in the relevant legislation, including public consultation. The SPD will also pass through Cabinet and Council for adoption.

13. A broad timetable for the delivery of the borough mitigation strategy and associated strategic wetlands is set out in the table below:

Time	Steps
Spring 2022	Land acquisition
Summer 2022	Strategic wetlands planning application
Summer 2022	Consultation/Adoption of SPD to accompany Borough Mitigation Strategy
Summer/Autumn 2022	Planning permissions for affected developments to be issued/considered as appropriate
Autumn 2022 – Summer 2024	Construction of wetlands
Autumn 2024	Wetlands fully operational

14. The Council's working assumption relating to the above, is as follows:

- Once a strategic wetland scheme has detailed planning permission, the Local Planning Authority will then be in a position from a nutrient neutrality point of view to be able to grant planning permission for relevant housing proposals.
- This position could only apply where a relevant housing proposer can demonstrate, through their application, that:
 - they have produced an Appropriate Assessment that shows that there is nutrient mitigation available to achieve 'neutrality' and:
 - they have followed the guidance and process set out in the Council's Supplementary Planning Document in respect of nutrient mitigation, and any apportionment (guidance yet to be produced).
- Those housing proposals that are granted planning permission on the basis of nutrient neutrality will have occupation restrictions applied. These will be removed once the relevant wetland is suitably advanced i.e. it is fully established and in place. This is likely to take two growing seasons.
- It is hoped that such occupation restrictions will not be needed in the medium to longer term as sufficient wetland areas will be being

advanced and constructed, as part of the borough wide strategic wetland solution. The aim must be to ensure that any future nutrient mitigation will relate to an already constructed and established wetland.

Operational Statement

15. The ongoing progression of strategic wetlands within the borough has highlighted a number of complexities on account of the nature and context of the issue and spatial scale. These complexities include the technical aspects of the project, e.g. understanding the hydrological impacts and engineering requirements of any new wetland, as well as which parts of the river network are most receptive to such a solution.
16. The Council are not the only organisation that will be involved in creating and delivering strategic wetlands - a co-ordinated approach is needed, something which the Council have undertaken many times before to great success.
17. This joined-up approach includes the Environment Agency, both from a planning perspective as well as their permitting regime. It also includes Natural England given that they authored the Stodmarsh Advice, and their desire to make sure sustainable and effective solutions to achieve nutrient neutrality are secured, especially where they relate to nature based solutions.
18. Each partner, understandably, has its own specific focus and regulatory framework. However, by working in a collaborative way, the Council is ensuring that the best possible wetland solution can be delivered and more crucially has the 'buy-in' from the key partners at the start of the process.
19. The key objective which underpins the entire wetland project is to ensure that any future wetland/s make the best use of land. This is a key requirement of the National Planning Policy Framework (NPPF). Working with partners such as the Environment Agency and Natural England, in a strategic way, is crucial to achieving this objective.
20. The river corridor is an expansive, yet finite area of land. The catchment is in an area of water scarcity, which raises potential concerns about the ability to abstract water from the river for the purposes of a new wetland. It is therefore crucial that new strategic wetlands are able to be as effective as possible in terms of location, but also their scale, management and maintenance. Clearly, a strategic solution, which includes the involvement and support of the Environment Agency and Natural England, provides the best chance to ensure that the solution provides the maximum benefits.
21. It is within this wider context, that the 'Operational Statement' has been jointly prepared by Ashford Borough Council, KCC, the Environment Agency and Natural England. It is now presented to the Cabinet for agreement.
22. The objectives of the Operational Statement are threefold.
23. Firstly, it sets out in a clear and transparent way that the Council is committed to progressing a land based strategic wetland solution as part of the overall Stodmarsh project, and is currently working in partnership with the key bodies

in order to deliver this (subject, of course, to planning permission at the appropriate time).

24. Secondly, the Statement sets out a series of key actions and principles that the parties (signatories to the Statement) agree to, in order to ensure that a collaborative approach continues.
25. Thirdly, the Statement highlights a number of the key complexities associated with achieving future wetlands in the borough in a way that makes best use of land. This includes how the Council intends to deal, in the short to medium term, with certain types of wetland applications.
26. The approach as outlined is considered to be necessary to avoid a 'first come first served' position emerging, where available hydrological capacity to deliver functional wetlands in the catchment may be utilised to support unplanned or otherwise unacceptable development and thus frustrate the ability for the Council to deliver its Local Plan targets or other suitable development proposals.
27. The Statement is considered to be a short term position pending progress on the procurement and delivery of strategic wetlands. It may be in future that the position is revised once the capacity for mitigation from any strategic wetland solution is better known and the Environment Agency are able to accurately assess the overall hydrological position relating to abstraction from the Stour in the context of their other duties around water quality. Therefore, it is envisaged that the Council will revisit any guidance on this matter in due course.
28. Additionally, further position statements or agreements with key partners may also be required in the future given the complexities, scale of the area impacted, and the amount of new housing on 'hold' because of the wider Stodmarsh issue. This will be done as part of the ongoing catchment wide strategy.

Proposal

29. The proposal in front of Cabinet is to note the progress of the Council's response to the Stodmarsh issue and agree to adopt the Operational Statement in Appendix 1 as a as a document informing the public and other stakeholders of material planning considerations likely to be reflected in the Council's decision-making on relevant planning applications, and to that end to be published on the Council's website and kept under review as necessary.

Implications and Risk Assessment

30. The wider risks associated with the Stodmarsh issue are broad and are explained in the July 2021 Cabinet report. These risks have not significantly altered.
31. Officers are of the opinion that there is a greater risk from not producing an Operational Statement. Providing the development market with a clear steer as to the Council's approach and intentions on this issue is seen as a vital tool in being transparent and providing a steer to potential applicants. The support

of Natural England and the Environment Agency to the Operational Statement provides further clarity for the development industry.

32. Swift action is required by the Council to ensure that strategic wetlands are delivered and are not prejudiced by an ad-hoc piecemeal 'first come first served' approach. The Operational Statement seeks to prevent this situation and sets out that, as with the planning of any important infrastructure, a carefully considered strategic approach that involves the relevant stakeholders is the optimum way to proceed.

Equalities Impact Assessment

33. Members are referred to the attached Assessment.

Other Options Considered

34. One other option is not to adopt the Operational Statement. This is covered in the risks above.

Next Steps in Process

35. Work will continue on the Council's response to the nutrient neutrality issue. This will include the preparation of new documents, strategies or actions which assist in the preparation of the strategic response to this issue, including the strategic wetland delivery. The proposed Supplementary Planning Document will be a key component of this strategy and will be consulted on as per the normal preparation process and reported back to Cabinet and Council when needed.
36. Work will also continue on the catchment wide strategic response and the Ashford and Canterbury ongoing mitigation strategies will help shape this response moving forward.

Conclusion

37. As clearly illustrated above, the Council are still taking a proactive approach to lead and deliver a solution, to remove the current block on housing growth within the borough. By agreeing the recommendations, the Council can continue to retain control over the process and ensure that the strategic solutions, including strategic wetlands in the borough, are delivered in a timely manner through a co-ordinated structured approach with key partners.
38. Establishing and publicising the Council's and other key partners' intentions in a clear and transparent way is considered the right thing to do, so all parties and the public are aware of the current state of play and relevant material considerations.

Portfolio Holder's Views (Cllr Neil Bell)

39. It should not be underestimated that the wider Stodmarsh issue remains a significant challenge for the Council. There continues to be a 'hold' to the granting of planning permissions for new housing in otherwise highly

sustainable locations, as identified through the Council's Local Plan. In response, the Council continue to take a proactive and pragmatic stance through their pursuit of new strategic wetlands within the borough, as a means of providing nutrient mitigation for development in the future. This response, alongside working with others on the catchment-wide strategy, demonstrates that the Council is doing all it can to remove this hold and move forward as swiftly as possible. The Report clearly sets out this progress.

40. Pursuing the creation of new strategic wetlands is not straight forward and it is welcomed that Natural England and the Environment Agency are working in partnership with the Council to help deliver the solution. The Operational Statement clearly expresses that all parties are united in what they want to achieve and how they intend to deliver the solution. In doing so, it also gives the market and other stakeholders clarity about how the Council will progress new strategic wetlands, in a way that is consistent with the Council's emerging Stodmarsh Mitigation Strategy. I therefore wholeheartedly recommend to Cabinet to approve the Operational Statement.

Contact and Email

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STODMARSH OPERATIONAL STATEMENT – MARCH 2022

Parties to this Operational Statement

This Operational Statement has been prepared by Ashford Borough Council, the Environment Agency, Kent County Council and Natural England.

Spatial scope of this Operational Statement

This Operational Statement applies to the Stour catchment area of Ashford borough.

Primary purpose of the Operational Statement

The primary purpose of the Statement is to provide clarity to the market as to how the respective decision makers and key stakeholders are progressing the many aspects and complexities associated with the wider Stodmarsh nutrient issue, with a specific focus on potential future strategic wetlands.

Each party is united in its desire to find a strategic solution in the form of the delivery of a new wetland area and have adopted a partnership approach to realise this desire. However, it needs to be understood that each party has their own framework within which they are working within.

In broad terms, and in the context of this Operational Statement, this is summarised below:

- Ashford Borough Council is the decision maker in relation to determining planning applications within its administrative boundary. As the Local Planning Authority, it also has responsibility for the preparation of a Local Plan for the borough and facilitation of the implementation of that Plan.
- The Environment Agency (EA) are a statutory consultee in the planning process, providing expert advice to Local Planning Authorities, Minerals and Waste authorities, and communities on the production of development plans, and on individual planning proposals. Accordingly, this Statement clearly articulates their in-principle view regarding the issue of progressing a new strategic wetland and in doing so will help shape their advice for relevant planning applications.

In addition, they are responsible for deciding whether to grant environmental permits relating to the water environment, through their permitting regime, which is a separate part of the overall process.

- Natural England (NE) is responsible for promoting nature conservation and protecting biodiversity, including ensuring that the network of habitat sites is appropriately maintained or restored to a favourable condition. In this case, NE is the appropriate nature conservation body and provides advice in relation to the habitat sites which the decision maker must have regard to. This Statement will help shape their advice for future planning applications, so a consistent

message is delivered. NE has also published the relevant advice¹ which should be read in conjunction with this Statement.

- Kent County Council (KCC) are a statutory consultee in the planning process and have played an important role in the emerging strategic wetland solution within the borough. They play a key co-ordination role, helping to ensure that a joined up approach is progressed across the county and provide a strong voice to Government to help ensure that infrastructure comes forward in a sustainable way that will deliver the growth and development aspirations of the County.

Within the context above, the following Key Principles and Key Actions are agreed by Ashford Borough Council and the Environment Agency and are broadly endorsed by Natural England and Kent County Council.

Key Principles

- **Principle 1** - *A co-ordinated and strategic nutrient mitigation solution addressing planned development and associated infrastructure within Ashford borough should be pursued to tackle the issues raised by the Natural England Stodmarsh Advice.*
- **Principle 2** – *A cost-effective land based strategic nutrient mitigation solution shall be delivered which will enable sustainably planned housing development within Ashford borough to achieve nutrient neutrality, so that housing developments can progress swiftly through the appropriate mechanisms.*
- **Principle 3** – *The land based strategic solution will be delivered and maintained in such a way to provide suitable and sustainable environmental responses that prevent further deterioration of the Stodmarsh Lakes from phosphorus and nitrogen associated with the development of overnight accommodation in the Stour catchment.*
- **Principle 4** – *A partnership approach, which is adopted and/or endorsed by the parties in this Operational Statement, will be of paramount importance to deliver Principles 1 – 3 to tackle the issues raised by the Natural England Stodmarsh Advice.*

Key Actions

- **Action 1.** *Ashford Borough Council, with support from NE and EA, will pursue the creation and delivery of publically owned and managed strategic wetland(s) in the Stour Catchment, for the purposes of generating*

¹ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

nitrogen and phosphorus ‘credits’ to release delivery of planned housing development within Ashford Borough²,

Action 2. *Continue to raise with Government the need to secure a short, medium and long term solution to the Stodmarsh issue to ensure that sustainable housing delivery in East Kent does not continue to be stalled,*

Action 3. *Continue to work together with other partner agencies, such as the Kent and Medway Economic Partnership (KMEP), the South East Local Enterprise Partnership (SELEP) and Southern Water, as part of a collaborative framework to ensure that all strategies are aligned, produced and implemented as swiftly as possible, and*

Action 4. *The next iterations of the relevant Local Plans will be cognisant of the potential need to identify suitable land, should further land based strategic solutions be required as a means of providing a plan-led response to the Stodmarsh issue and the need for ‘nutrient neutrality’.*

Applicability to planning decisions – Ashford Borough Council Position

The Operational Statement should be read as a whole and, where relevant, will be a matter to be taken into account as a material planning consideration in planning decisions made by Ashford Borough Council.

There are many complexities and sensitivities associated with delivering new wetlands (see ‘The Key Considerations Associated with Wetland Delivery’ section below), which need to be balanced appropriately to deliver a suitable and long term sustainable solution.

Accordingly, the Council will continue to support new wetlands that mitigate sustainable housing proposals in a way that complements the delivery of the emerging strategic wetland solution. On-site wetlands which are in line with the requirements set out in the Natural England Advice Note and which have the support, when needed, of the Environment Agency will therefore generally be supported. Doing so, is consistent with the Council’s emerging Stodmarsh Mitigation Strategy.

However, the Council will continue to resist ‘standalone’ wetlands or ‘off-site’ wetlands which are being proposed to generate nutrient mitigation that is:

- not clearly attributable to a specific housing proposal, or
- clearly attributable to a specific housing proposal, but that proposal is not seeking to deliver new housing on either a site allocated in the Council’s Local Plan 2030 or that would deliver significant and wider planning benefits (for example, a sustainable brownfield site),

unless it can be clearly and unequivocally demonstrated by the applicant that the creation of such wetlands would not prejudice the ability to deliver the scale and form

² Wider collaboration, outside of the parties of this Operational Statement, which contributes to the delivery of a strategic solution will be welcomed.

of new strategic wetlands necessary to release all development necessary to successfully deliver the development targets set out in the Ashford Local Plan to 2030.

This position is needed at this stage as there is only a finite area of land which may be suitable for the delivery of a strategic wetland solution, one which makes the best use of land - a key requirement of the National Planning Policy Framework.

Accordingly, and given the wider complexities of delivering new strategic wetlands, the Council should not be granting planning permission for new wetlands that may, in any way, prejudice their delivery. Any release of land for new wetlands areas should, at this time, be limited to those proposals which deliver those sites allocated in the Council's Local Plan 2030. These are sites which have been rigorously tested as being 'sound' in planning terms.

Failure to adopt this position would mean that the delivery of 'critical' infrastructure, needed to support new housing growth, would be planned in an ad-hoc and 'first come first served' basis. This clearly needs to be avoided, and is in direct conflict with the underlying principle of the planning system to be, and remain, plan-led.

For the avoidance of doubt, the Council are not suggesting that this stance on standalone, or 'off-site' wetlands will continue for a significant period of time. However, there must be caution applied until such time as any strategic wetland solution is suitably advanced.

Clearly, by working in partnership with Natural England and the Environment Agency, the Council is ensuring that the most optimum solution is delivered as swiftly as possible.

Context

This Operational Statement sits within the progression of a strategic and co-ordinated solution to the nutrient neutrality issue that has arisen as a consequence of the Natural England Advice issued in July 2020 (updated in November 2020)³.

Ashford Borough Council has drafted a Cabinet Report in March 2022 which sets out how the strategic wetland solutions fits within the wider response to the Stodmarsh nutrient issue. The March 2022 Cabinet Report⁴ should be read in tandem with this Operational Statement.

Further details about the response to the wider Stodmarsh nutrient neutrality issue, and the Council's response are available on the Council website at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

Stodmarsh Lakes

³ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

⁴ Link to March 2022 Stodmarsh Cabinet Report - [Agenda for Cabinet on Thursday, 31st March, 2022, 7.00 pm - Modern Council \(moderngov.co.uk\)](#)

The Stodmarsh Lakes lie east of Canterbury and is a Special Protection Area (SPA), Ramsar site, Special area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI) and parts are a National Nature Reserve (NNR). It is a site of national and international importance for a range of water dependent habitats and wildlife.

The Stodmarsh Lakes are 'partially' fed by the Great Stour and water entering the watercourses in the Stour catchment. This catchment covers a significant portion of East Kent, including the Local Authorities of Maidstone, Ashford, Folkestone & Hythe, Canterbury and Dover. Map 1 shows the administrative boundaries of Ashford and the extent of the Stour catchment.

As per the Natural England Advice, any development (providing overnight accommodation) within the Stour catchment is impacted by the requirement for nutrient neutrality, and is therefore considered within the scope of the Nutrient Mitigation Framework. In addition to developments within the catchment, those which lie outside of the catchment, but which discharge to a Wastewater Treatment Works (WwTW) in the catchment are also covered by the Advice. Other types of business or commercial development, not involving overnight accommodation, will generally not need to be included in the assessment unless they have other (non-sewerage) water quality implications. It is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.

This Operational Statement relates to the area of the Stour Catchment that falls within the administrative area of Ashford.

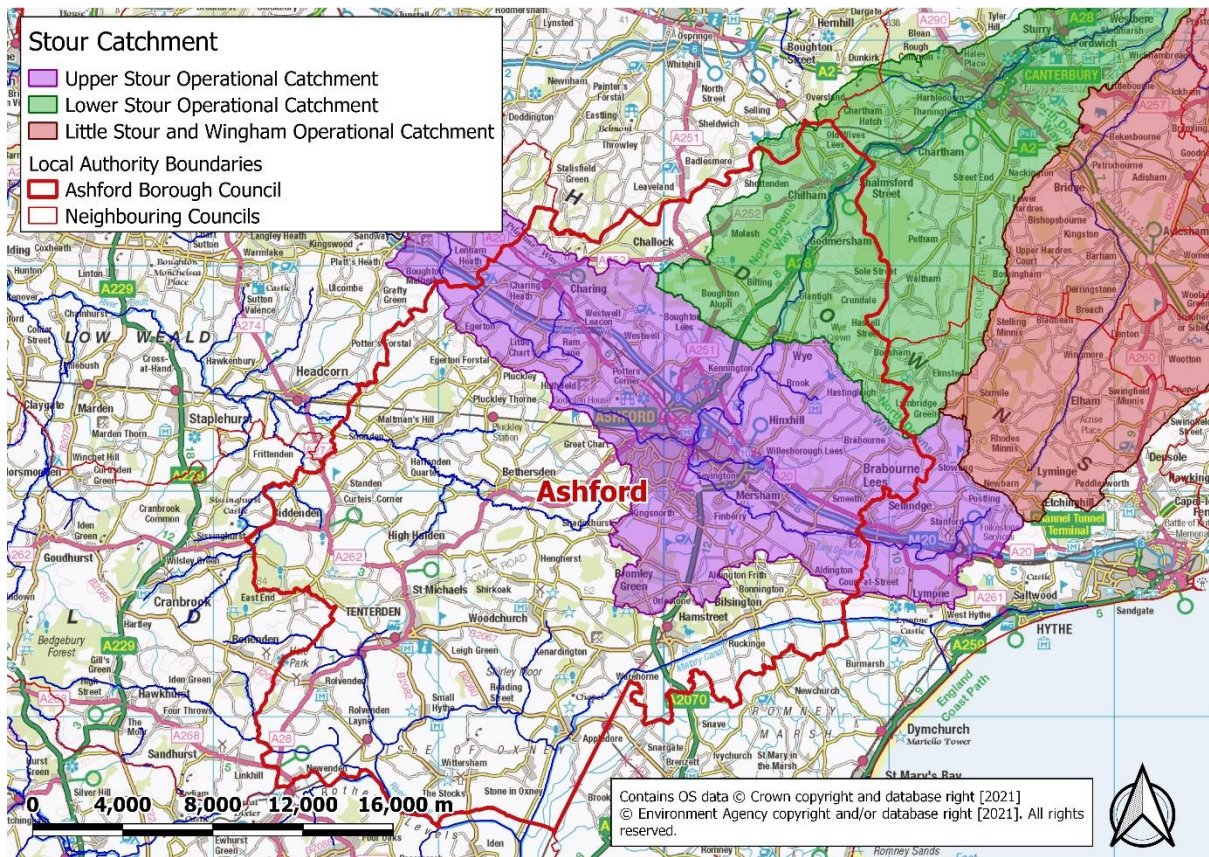


Figure 1: Stour catchment

On-site mitigation

All parties recognise that it is possible in some cases for development of new overnight accommodation to achieve nutrient neutrality via on-site solutions. On-site mitigation measures include, but are not limited to, increasing open space provisions within developments, built-in water efficiency measures, Sustainable Drainage Systems (SuDS) schemes extensively based on wetlands (rather than ponds or detention basins), and garden and pet waste management.

This Operational Statement is cognisant of this context, and focuses largely on the issue of delivering off-site wetlands to achieve nutrient neutrality for development proposals which are unable to provide on-site mitigation.

The key considerations associated with strategic wetland delivery

For the purposes of this Operational Statement, the term 'Wetland' means one which relies on the abstraction or transfer of water from the River Stour and its tributaries.

Strategic wetland(s) might be in the form of one large wetland, or a series of carefully planned wetlands.

Wetlands are an efficient nature-based mechanism for removing nutrients from surface water runoff and rivers. Wetlands which rely on the abstraction and transfer of water from watercourses to provide a source of incoming nutrients, or rely on the

re-routing of a watercourse through a proposed wetland, are most effective at nutrient mitigation and provide the highest degree of certainty.

Whatever land based solution is delivered, it needs to make sure that it makes the most efficient use of land – a key requirement of the National Planning Policy Framework (NPPF). It also needs to balance all the wider requirements as listed in this paper. Failure to adopt such a strategic approach could prejudice the delivery of a strategic solution and that cannot be risked at this stage.

All parties agree that the following are the key considerations associated with strategic wetland delivery and why a balanced and co-ordinated approach is necessary.

- ***The spatial restrictions:*** Any strategic wetland solution will need to be delivered within the Stour catchment, ideally proximal to the River Stour and its tributaries, to deliver the necessary nutrient offsetting. It has been identified that there are particular areas within the catchment which are most suitable for the creation of wetlands due to various technical constraints. These constraints include, but are not limited to, topography, geology, ecological sensitivity, and variations in flow level and nutrient level in waterbodies within the catchment area. Consequently, there is a limited area of land within the catchment which satisfies all of the technical constraints and can be relied on for the successful implementation of wetlands.
- ***Implications on The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017:*** It is necessary for all wetland schemes to comply with the Water Environment Regulations Framework Directive objectives for the connected and surrounding water bodies. The purpose of the wetland will be to improve the physio-chemical conditions of the relevant waterbody, and ultimately the Great Stour River at Stodmarsh Lakes, by reducing the concentration of phosphorus and nitrogen nutrients within the water. There is, however, the potential for a wetland scheme to affect other Water Environment Regulations ‘quality elements’, of which the most relevant are biological and hydro-morphological.
- ***Water Stress:*** The Stour Catchment is located in a Water Stress area and as such any abstraction of water will require a permit from the Environment Agency. It is anticipated that abstraction of water from the River Stour and/or its tributaries will be required to serve the strategic wetlands.
- ***Technical requirements:*** As previously stated there are a number of technical constraints affecting the suitable location of wetlands within the catchment. Therefore careful consideration is required to ensure that the wetlands are suitably designed to provide sufficient nutrient mitigation, make efficient use of the land and meet the requirements set out in the Natural England Stodmarsh Advice⁵.

⁵ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

Any wetland creation will require planning permission. In addition a range of permits may be required from the Environment Agency, relating to wastewater discharge, water abstraction, waste management and surface water management.

- **Flood risk:** As wetlands are constructed largely in the floodplain they must also be designed to ensure no adverse effect in terms of flood risk
- **Multi-functionality:** Delivering wetlands on a strategic scale has the potential to deliver ecological benefits, such as new habitat creation and increased biodiversity. Although it is recognised that wetlands will be designed with nutrient removal as the primary objective, a partnership approach will allow any proposed wetland scheme or schemes to maximise any co-benefits relating to flood risk alleviation, biodiversity gain / habitat creation, carbon sequestration, tree planting, river channel restoration works as well as education and public amenity.
- **The need to work in partnership with all parties:** It is recognised that for a public body partnership to deliver a wetland scheme it will require approval from both the Environment Agency and Natural England through the planning process and Environmental Permitting Regulations. It is therefore paramount that the delivery of strategic wetlands is based on a partnership approach, with endorsement from both the Environment Agency and Natural England. This is to address and resolve any potential issues at an early stage regarding permitting and/or certainty relating to the Habitat Regulations, to enable timely delivery of strategic wetlands.
- **The need to be flexible:** The delivery of wetlands of the required scale may not be possible on a single site or in a single construction window within a single borough/district. It may be suitable to deliver a series of smaller wetlands forming a strategic wetland network or phase the wetland creation. It is considered that wetland delivery on any reasonable scale should be pursued by the public body partnership, in the first instance, to begin to release development as soon as possible.

Future Issues and Actions

This Operational Statement aims to confirm the immediate actions that are needed in relation to nutrient neutrality, but there are also a number of issues that have a longer time horizon. These issues include (but are not limited to):

- Ensuring consistency of approach and advice (including advice given to developers and land agents);
- Maintaining collaborative approach towards the preparation and publication of the Nutrient Mitigation Framework components;

- Complexities associated with the delivery of strategic wetlands, including planning permission, permitting/environmental licences, construction and maintenance;
- Involvement of other relevant bodies to ensure the primary objective can be delivered and managed in perpetuity.

Future amendments to this Operational Statement, or additional standalone Operational Statements, may be required to set out in detail how the parties intend to address these (and other) strategic issues.

DRAFT

Operational Statement agreed by:

On behalf of Ashford Borough Council	On behalf of Environment Agency
Signed:	Signed:
.....
(POSITION)	(POSITION)

Operational Statement broadly endorsed by:

On behalf of Natural England	On behalf of Kent County Council
Signed:	Signed:
.....
(POSITION)	(POSITION)

DRAFT

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Armed Forces Community

9. As part of the council's commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council's Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.

10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:

- Current serving members of the Armed Forces (both Regular and Reserve)
- Former serving members of the Armed Forces (both Regular and Reserve)
- The families of current and former Armed Forces personnel.

Case law principles

11. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or

service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	Simon Cole
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	Adopt the Stodmarsh Operational Statement
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	31 March 2022
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	The aim of the Stodmarsh Operational Statement is to set out how the parties are working together in partnership to deliver a strategic solution to the Stodmarsh issue. The Operational Statement also sets out how the Council will progress new strategic wetlands.
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	Discussions have been held with Environment Agency and Natural England to discuss about the issues associated with delivering strategic wetlands and the actions required to work through this goal in a partnership approach.
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	Discussions have been held with Environment Agency and Natural England to discuss the approach towards strategic wetlands and nutrient neutrality within the borough of Ashford.

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	None	Neutral
Middle age	None	Neutral
Young adult	None	Neutral
Children	None	Neutral
<u>DISABILITY</u> Physical	None	Neutral
Mental	None	Neutral
Sensory	None	Neutral
<u>GENDER RE- ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	None	Neutral
Former service personnel	None	Neutral
Service families	None	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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Is the decision relevant to the aims of the equality duty?	
Guidance on the aims can be found in the EHRC's Essential Guide , alongside fuller PSED Technical Guidance .	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

Conclusion:	
<ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? 	<p>Officers have been working with Natural England, the Environment Agency and Kent County Council to prepare an Operational Statement. The Operational Statement address how the parties will work in partnership to deliver the strategic response and strategic wetlands for nutrient neutrality.</p> <p>The Council has considered the equalities act, however the Operational Statement is not specifically relevant to any of the protected characteristics. The Operational Statement will form part of the strategic response to remove the current hold on development, which will benefit the Stour catchment (and borough) as a whole. It is concluded that the steps proposed in this report, to adopt the Operational Statement, do not prejudice any existing groups.</p>
EIA completion date:	18 March 2022